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**Ad Hoc Committee on the Elaboration of a
Convention against Transnational Organized Crime**
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PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

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I. INTRODUCTION

The Secretary-General has the honour to bring to the attention of the Ad Hoc Committee the comments and proposals of States that relate to the draft international legal instrument against illicit manufacturing of and trafficking in firearms, ammunition and other related materials, which was submitted by the Government of Canada.

V.98-57824 (E)

II. PROPOSALS AND CONTRIBUTIONS RECEIVED FROM GOVERNMENTS

Japan

[Original: English]

2. Comments on the Canadian draft firearm Protocol

1. Japan appreciates the efforts of the Government of Canada in drafting the protocol on firearms. The following are Japan's tentative comments on that draft. These comments are, as noted above, tentative and there will therefore be additional and modified comments based upon discussions to be held during the meetings of the United Nations Ad Hoc Committee.

Overview

2. Japan is greatly concerned about illicit trafficking in and manufacturing of firearms, ammunition and other related materials. The necessity of regulation should be recognized and strongly supported. As a result, Japan greatly appreciates the Canadian initiative.

3. The main concern with regard to the draft Protocol is related to the kind of activities that should be criminalized. To summarize the comments below, whether the article stipulates an obligation for the State Party to punish the conduct as a crime or stipulates an obligation for the State Party to take appropriate measures to prevent the conduct should be considered carefully.

Article I

4. In relation to the Convention against Transnational Organized Crime, it is not clear what the phrase "the Convention and the Protocol shall be read and interpreted together as one single instrument" means (i.e. whether all the tools stipulated in the Convention shall be applied to the conduct criminalized in the Protocol, and the nature of the relationship between the Protocol and the scope of Convention). Therefore, more detailed explanation of this will be needed.

Article II

5. Generally speaking, the definitions in each subparagraph should be clearly outlined in order to adjust the whole structure of the Protocol. Therefore, further consideration is necessary. Moreover, it needs to be stipulated, after careful discussion, which specific parts and components should be included in the Protocol.

Subparagraph (a)

6. The meaning, contents and significance of each word used in this section should be clarified in future discussions.

Subparagraph (b)

7. The words "or substance substituted for them" should be added, as stipulated in subparagraph (g) of article 1 of the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Subparagraph (c)

8. In this section, "in accordance with its domestic laws" should be added.

Subparagraph (d)

9. The meaning, contents and significance of each word used in this section should be clarified in future discussions.

Subparagraph (e)

10. The definition of "illicit trafficking" should be clarified. (Its provisions, with the exception of import and export, are unclear.)

Subparagraph (f)

11. The meaning of "other related materials" should be clarified.

Other comments

12. The definition of "tracing" should be stipulated in the Protocol. (For example, "the systematic tracking of firearms from manufacturer to purchaser (and/or possessor) for the purpose of aiding law enforcement officials in identifying suspects involved in criminal violations, establishing stolen status and proving ownership", in the United Nations international study on firearm regulations.)

Article III

13. As mentioned in the United States comments, a provision such a ticle 2 of the OAS Convention, namely, "prevent, combat, eradicate, exchange of information and experience etc.", should be added.

Article IV

14. The word "commercially" should be removed and a provision related to illicit manufacturing corresponding to "manufacturing" should be added.

15. The meaning of the phrase "international transactions or transfers for purposes of national security," should be more clearly stipulated. With regard to the phrase "but not to international transactions or transfers for purposes of national security", it is not clear whether "for purposes of national security" is related to "international transactions or transfers" or only to "transfers". Therefore, this point should be clarified. If it relates only to "transfers", in order to avoid ambiguity, the United States comment ("it does not apply to State-to-State transactions or to transactions for the purposes of national security") is more appropriate. The distinction between "transactions" and "transfers" should also be clarified.

16. Generally speaking, military forces stationed in foreign countries are not under the control or jurisdiction of the recipient State despite the fact that they are in action in the territory of the recipient State Party. Therefore, the State Party should not be obliged to implement the obligations stipulated in the Protocol concerning foreign military forces stationed in the State Party.

Article V

17. The word "unlawfully" should be added before the term "intentionally", as is stipulated in paragraph 1, article 2, of the International Convention for the Suppression of Terrorist Bombings, or in paragraph 1, article 3, of the Convention for the Suppression of unlawful Acts against the Safety of Maritime Navigation.

18. To offer funds and transportation for illicit manufacturing and trafficking should be criminalized.

Paragraph 1

19. See the comments in the overview and on article II.

Article V *bis*

20. There should be a provision that encourages State Parties to reduce or exempt from penalty in the case of voluntary surrender to the authorities for the collection of illicit firearms.

Article VII

21. The meanings of "obligations", "record keeping" and "information" should be clarified.

22. The reason why each State Party should maintain information for "10" years is unclear. The appropriate retention period should be considered and agreed to pursuant to future discussions of the Protocol.

Article IX, paragraph 1

Subparagraph 1 (b)

23. The period for marking of imported firearms should be clearly defined. (For instance, the period during which they pass through customs or during which they are legally obtained by the final recipient.)

24. Subparagraph 1 (b) should be worded as No. 18 of the G-8 Action Plan, which reads "unless other disposal has been officially authorized and these firearms and ammunition have been marked or recorded and their disposal also recorded".

Article XI

25. To be effective, recognition should be also imposed in the case of import from, export to and transit through non-State Parties. This would reduce detour exports.

Paragraph 2

26. "Transit" should be clearly defined, because it is not appropriate to impose obligations on the State Party in the following cases: aircraft merely flying over the territory of the State Party; a ship making innocent passage through territorial waters; aircraft in transit through an airport of the State Party; or a ship in transit through the seaport of the State Party.

Paragraph 4

27. The meanings of "upon request", "receipt" and "inform" should be clearly stipulated.

28. When setting up structures based on this paragraph, full consideration should be given to the protection of privacy and a civil servant's obligation to preserve secrets, as provided for in related domestic law.

Article XII

29. Measures to ensure the security of firearms imported and so on should be clarified.

Article XIII

30. The meaning of "controls at points through which exports pass" should be clarified (for example, does it mean inspection at the customs of an airport or port?).

Article XV

31. "A single point of contact", as provided for in this article, should allow the exchange of information already established among the existing authorities.

Article XVII

32. See the comments in paragraph 28 above.

Article XVIII

33. This article should appear as paragraph 3 of article XVI.

Other comments

34. "Obtaining the support and cooperation of manufacturers, dealers, importers ..." (No. 16 of the G-8 Action Plan), and "encouraging the public support and cooperation" (No. 17 of the G-8 Action Plan) should be referred to at some point in the Protocol.

Mexico

[Original: English]

CANADIAN DRAFT	MEXICAN PROPOSALS
Preamble	*Preamble*
(a) ~~*Bearing in mind* that freedom from the fear of crime is fundamental to international cooperation and to the sustainable development of States and that international illicit trafficking in and criminal misuse of firearms have a harmful effect on the security of each State and endanger the well-being of peoples and their social and economic development,~~	***Aware*** **of the urgent need to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials, owing to the harmful effects of these activities on the security of each State and the region as a whole, endangering the well-being of peoples, their social and economic development and their right to live in peace,**
(b) *Concerned* by the increase, at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and by the serious problems resulting therefrom,	*Concerned* by the increase, at the international level, in the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials and by the serious problems resulting therefrom,
(c) *Reaffirming* that States Parties give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,	*Reaffirming* that States Parties give high priority to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials because of the links of such activities with drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,
	Concerned **about the illicit manufacture of explosives from substances and articles that in and of themselves are not explosives—and that are not addressed by this Convention owing to their other lawful uses—for activities related to drug trafficking, terrorism, transnational organized crime and mercenary and other criminal activities,**
(d) *Considering* the urgent need for all States, and especially those States that produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,	*Considering* the urgent need for all States, and especially those States which produce, export and import arms, to take the necessary measures to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials,
(e) *Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials requires international cooperation, exchange of information, and other appropriate measures at the national, regional and global levels,	*Convinced* that combating the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials requires international cooperation, exchange of information and other appropriate measures at the national, regional and global levels,

(g) *Stressing* that the promotion of harmonized import and export controls over the ~~licit~~ international movement of firearms, ammunition and other related materials, ~~in addition to a system of procedures for applying them~~, is essential to the prevention of illicit ~~international~~ trafficking,

Stressing that the promotion of harmonized import, export and **in-transit** controls over the international movement of firearms, ammunition, **explosives** and other related materials is essential to the prevention of illicit trafficking,

***Stressing* the need, in peace processes and post-conflict situations, to achieve effective control of firearms, ammunition, explosives and other related materials in order to prevent their entry onto the illicit market,**

***Mindful* of the pertinent resolutions of the General Assembly on measures to eradicate the illicit transfer of conventional weapons and on the need for all States to guarantee their security,**

(f) *Recognizing* the importance of strengthening existing international law enforcement support mechanisms, such as the weapon and explosive tracking system of the International Criminal Police Organization, to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials,

Recognizing the importance of strengthening existing international law enforcement support mechanisms, such as the weapon and explosive tracking system of the International Criminal Police Organization, to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives**, and other related materials,

(h) *Recognizing* that States have developed different cultural and historical uses for firearms, and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not intended to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by the States Parties,

Recognizing that States have developed different cultural and historical uses for firearms, and that the purpose of enhancing international cooperation to eradicate illicit transnational trafficking in firearms is not intended to discourage or diminish lawful leisure or recreational activities such as travel or tourism for sport shooting, hunting and other forms of lawful ownership and use of firearms that are recognized by the States Parties,

(i) *Recalling* that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials and recognizing that this Protocol does not commit the States Parties to enact legislation or regulations pertaining to firearm ownership, possession or trade of a wholly domestic nature and that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

Recalling that States Parties to the present Protocol have their own domestic laws and regulations on firearms, ammunition and other related materials, and recognizing that this Protocol does not commit the States Parties to enact legislation or regulations pertaining to firearm ownership, possession or trade of a wholly domestic nature, and recognizing that the States Parties will apply those laws and regulations in a manner consistent with this Protocol,

Reaffirming the principles of sovereignty, non-intervention and the juridical equality of States,

Article I

This Protocol supplements the United Nations Convention against Transnational Organized Crime, done at ... (hereinafter referred to as "the Convention"), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

Article II
Definitions

For the purpose of this Protocol, the following definitions shall apply:

(a) "Ammunition": the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm;

~~(b) "Controlled delivery": the technique of allowing illicit or suspect consignments of firearms, ammunition and other related materials to pass out of, through or into the territory of one or more States with the knowledge and under the supervision of the competent authorities of that State or those States, with a view to identifying persons involved in the commission of offences referred to in article V of this Protocol;~~

(c) "Firearms": any barrelled weapon that will be or is designed or may be readily converted to expel a bullet or projectile by the action of an explosive, including any frame or receiver of such a barrelled weapon but not including any antique firearm manufactured before the twentieth century or its replicas;

(d) "Illicit manufacturing": the manufacture or assembly of firearms, ammunition and other related materials:

(i) From components or parts illicitly trafficked; or

Article I

This Protocol supplements the United Nations Convention against Transnational Organized Crime, done at ... (hereinafter referred to as "the Convention"), and, as regards the States Parties to the Convention and to the Protocol, those two instruments shall be read and interpreted together as one single instrument.

Article II
Definitions

For the purposes of this Protocol, the following definitions shall apply:

(a) "Ammunition": the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in a firearm;

(b) "Firearms":

(i) Any barrelled weapon that will be or is designed or may be readily converted to expel a bullet or projectile by the action of an explosive, including any frame or receiver of such a barrelled weapon but not including any antique firearm manufactured before the twentieth century or its replicas;

(ii) Any other weapon or destructive device such as any explosive, incendiary or gas bomb, grenade, rocket, rocket launcher, missile, missile system or mine;

(c) "Illicit manufacturing": the manufacture or assembly of firearms, ammunition, **explosives** and other related materials:

(i) From components or parts illicitly trafficked; or

(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacturing;

(e) "Illicit trafficking": the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from or across the territory of one State Party to that of another State Party, if any one of the States Parties concerned does not authorize it;

(f) "Other related materials": any component, parts or replacement parts of a ~~firearm that are essential to its operation~~ or accessories that can be attached to a firearm ~~and that enhance its lethality.~~

Article III
Purpose

The purpose of this Protocol is to promote and facilitate cooperation among States Parties to the Protocol and to the Convention with respect to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

Article IV
Scope

~~This Protocol applies to all classes of commercially traded firearms, ammunition and other related materials but not to international transactions or transfers for purposes of national security.~~

(ii) Without a licence from a competent governmental authority of the State Party where the manufacture or assembly takes place; or

(iii) Without marking the firearms at the time of manufacturing;

(d) "Illicit trafficking": the import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition, **explosives** and other related materials from or across the territory of one State Party to that of another State Party, if any one of the States Parties concerned does not authorize it;

(e) "Other related materials": any component, parts or replacement parts of a firearm or an accessory that can be attached to a firearm;

(f) "Explosives": any substance or article that is made, manufactured or used to produce an explosion, detonation or propulsive or pyrotechnic effect, except:

(i) Substances and articles that are not in and of themselves explosives; or

(ii) Substances and articles listed in the annex to this Protocol.

Article III
Purpose

The purpose of this Protocol is:

(a) To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials;

(b) To promote and facilitate cooperation and exchange of information and experience among States Parties to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials.

Article IV
Sovereignty

1. States Parties shall fulfil the obligations under this Protocol in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. A State Party shall not undertake in the territory of another State Party the exercise of jurisdiction and performance of functions that are exclusively reserved to the authorities of that other State Party by its domestic law.

Article V
Criminalization

Article V
Legislative measures

1. Each State Party shall adopt such necessary legislative or other measures as may be necessary to establish as offences under its domestic law, ~~when committed intentionally~~:

1. States Parties that have not done so shall adopt the necessary legislative or other measures to establish as **criminal** offences under their domestic law:

(a) Illicit trafficking in firearms, ammunition and other related materials; and

(a) Illicit trafficking in firearms, ammunition, **explosives** and other related materials;

(b) Illicit manufacturing of firearms, ammunition and other related materials.

(b) Illicit manufacturing of firearms, ammunition, **explosives** and other related materials.

2. Subject to the constitutional principles and basic concepts of its legal system, each State Party shall also establish as offences participation in the offences established pursuant to the foregoing paragraph, association with or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating and counselling the commission of such offences.

2. Subject to the constitutional principles and basic concepts of its legal system, each State Party shall also establish as offences participation in the offences established pursuant to the foregoing paragraph, association with or conspiracy to commit such offences, attempts to commit such offences and aiding, abetting, facilitating and counselling the commission of such offences.

Article VI
Jurisdiction

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Jurisdiction

Each State Party shall adopt such measures as may be necessary to establish its jurisdiction, in accordance with article 9 of the Convention, over the offences it has established pursuant to this Protocol.

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences it has established **in accordance with this Protocol when the offence in question is committed in its territory.**

2. Each State Party may adopt such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with this Convention when the offence is committed by one of its nationals or by a person who habitually resides in its territory.

3. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences it has established in accordance with this Convention when the alleged criminal is present in its territory and it does not extradite such person to another country on the ground of the nationality of the alleged criminal.

4. This Protocol does not preclude the application of any other rule of criminal jurisdiction established by a State Party under its domestic law.

Article VII
Confiscation or forfeiture

1. States Parties shall undertake to confiscate or forfeit firearms, ammunition and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

2. States Parties shall adopt the necessary measures to ensure that all firearms, ammunition and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking do not fall into the hands of private individuals or businesses through auction, sale or other disposal.

Article VII
Confiscation or forfeiture

1. States Parties shall undertake to confiscate or forfeit firearms, ammunition, **explosives** and other related materials that have been illicitly manufactured or trafficked, in accordance with article 7 of the Convention.

2. States Parties shall adopt the necessary measures to ensure that all firearms, ammunition, **explosives** and other related materials seized, confiscated or forfeited as a result of illicit manufacturing or trafficking do not fall into the hands of private individuals or businesses through auction, sale or other disposal.

Article VIII
Record-keeping

1. Each State Party shall maintain for not less than ten years the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations.

2. ~~Records shall be kept for a period of not less than ten years after the last transaction effected under a particular certificate.~~ State Parties shall identify to one another the agencies responsible for record-keeping.

~~3. States Parties shall use their best efforts to computerize their records for the purposes of enhancing one another's access to such information.~~

Article VIII
Record-keeping

1. Each State Party shall maintain for not less than **five** years the information necessary to trace and identify illicitly manufactured and illicitly trafficked firearms to enable it to comply with its obligations **under this Protocol**.

2. State Parties shall identify to one another the agencies responsible for record-keeping.

Article IX
Marking of firearms

1. For the purposes of identifying and tracing firearms, States Parties shall:

Article IX
Marking of firearms

1. For the purposes of identification and tracing of the firearms **referred to in subparagraph (b) (i) of article II** States Parties shall:

(a) Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its serial number;

(b) Require appropriate markings on each imported firearm permitting the identification of the importer's name and address; and

(c) Require the appropriate marking of any firearm confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

2. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings.

~~*Article X*~~
~~*Preventing the reactivating of deactivated firearms*~~

~~States Parties that have not already done so shall consider taking the necessary measures to prevent the reactivating of deactivated firearms, including through criminalization, if appropriate.~~

Article XI
General requirements for export, import and transit licensing or authorization systems

1. States Parties shall establish and maintain an effective system of export, import and international transit licensing or authorization for transfers of firearms, ammunition and other related materials.

2. States Parties shall not permit the transit of firearms, ammunition and other related materials until the receiving States Parties issue the corresponding licences or authorizations.

3. States Parties, before releasing shipments of firearms, ammunition and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition and other related materials.

(a) Require, at the time of manufacture of each firearm, the appropriate marking of the name of its manufacturer, its place of manufacture and its serial number;

(b) Require appropriate markings on each imported firearm permitting the identification of the importer's name and address; and

(c) Require the appropriate marking of any firearm confiscated or forfeited pursuant to article VII of this Protocol that is retained for official use.

2. The firearms referred to in sub-paragraph (b) (i) of article II should be marked appropriately at the time of manufacture, if possible.

3. States Parties shall encourage the firearm manufacturing industry to develop measures against the removal of markings.

Article X
General requirements for export, import and transit licensing or authorization systems

1. States Parties shall establish and maintain an effective system of export, import and international transit licensing or authorization for transfers of firearms, ammunition, **explosives** and other related materials.

2. States Parties shall not permit the transit of firearms, ammunition, **explosives** and other related materials until the receiving States Parties issue the corresponding licences or authorizations.

3. States Parties, before releasing shipments of firearms, ammunition, **explosives** and other related materials for export, shall ensure that the importing and transit States have issued the necessary licences or authorizations.

4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition, **explosives** and other related materials.

Article XII
Security measures

States Parties, in an effort to eliminate loss or diversion of firearms, ammunition and other related materials, shall undertake to adopt the necessary measures to ensure the security of firearms, ammunition and other related materials imported into, exported from or in transit through their respective territories.

Article XIII
Strengthening of controls at points through which exports pass

Each State Party shall adopt such measures as may be necessary to detect and prevent illicit trafficking in firearms, ammunition and other related materials between its territory and the territories of other States Parties, by strengthening controls at points through which exports pass.

Article XIV
Exchange of information

1. Without prejudice to articles 19 and 20 of the Convention, States Parties shall exchange among themselves, in conformity with their respective domestic laws and treaties applicable to them, relevant information on matters such as:

(a) Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, ammunition and other related materials;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition and other related materials; and ways of detecting such illicit manufacturing or trafficking;

(c) Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition and other related materials;

(d) Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition and other related materials; and

(e) Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

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States Parties, in an effort to eliminate loss or diversion of firearms, ammunition, **explosives** and other related materials, shall undertake to adopt the necessary measures to ensure the security of firearms, ammunition, **explosives** and other related materials imported into, exported from or in transit through their respective territories.

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(a) Authorized producers, dealers, importers, exporters and, whenever possible, carriers of firearms, ammunition, **explosives** and other related materials;

(b) The means of concealment used in the illicit manufacturing of or trafficking in firearms, ammunition, **explosives** and other related materials; and ways of detecting such illicit manufacturing or trafficking;

(c) Routes customarily used by criminal organizations engaged in illicit trafficking in firearms, ammunition, **explosives** and other related materials;

(d) Legislative experiences, practices and measures related to preventing, combating and eradicating the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials; and

(e) Techniques, practices and legislation developed to combat money-laundering related to the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials.

2. States Parties shall provide to or share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials and prosecute those involved in those illicit activities.

3. States Parties shall cooperate in the tracing of firearms, ammunition and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition and other related materials.

Article XV
Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials.

2. States Parties shall identify a national body or a single point of contact to act as liaison between States Parties ~~on matters relating to this Protocol~~.

2. States Parties shall provide to and share with each other, as appropriate, relevant scientific and technological information useful to law enforcement authorities in order to enhance one another's ability to prevent, detect and investigate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials and prosecute those involved in those illicit activities.

3. States Parties shall cooperate in the tracing of firearms, ammunition, **explosives** and other related materials that may have been illicitly manufactured or trafficked. Such cooperation shall include the provision of prompt and accurate responses to requests for assistance in tracing such firearms, ammunition, **explosives** and other related materials.

Article XIV
Cooperation

1. States Parties shall cooperate at the bilateral, regional and international levels to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials.

2. States Parties shall identify a national body or a single point of contact to act as liaison between States Parties **for the purposes of cooperation and information exchange**.

3. States Parties shall seek the support and cooperation of manufacturers, dealers, importers, exporters and commercial carriers of firearms, ammunition, explosives and other related materials to prevent and detect the foregoing illegal activities.

Article XV
Establishment of a focal point

1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within the Secretariat of the United Nations responsible for:

(a) Promoting the exchange of information provided for under this Protocol;

(b) Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

(c) Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition, explosives and other related materials;

(d) Promoting training and exchange of knowledge and experience among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

(e) Requesting from non-party States, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition, explosives and other related materials;

(f) Promoting measures to facilitate the application of this Protocol;

(g) Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;

(h) Establishing a database for consultation among States Parties on illicit manufacture of and trafficking in firearms, ammunition, explosives and other related materials, including those seized, confiscated or forfeited;

(i) Disseminating information to the general public on matters related to this Protocol;

(j) Coordinating international efforts to combat the illicit manufacture of and trafficking in firearms, ammunition, explosives and other related materials, in particular among relevant international organizations.

Article XVI
Exchange of experiences and training

1. States Parties shall cooperate in formulating programmes for the exchange of experiences and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proven to be effective in efforts to implement this Protocol.

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Exchange of experience and training

1. States Parties shall cooperate in formulating programmes for the exchange of experience and training among competent officials and shall provide each other assistance to facilitate access to equipment or technology proven to be effective in efforts to implement this Protocol.

2. States Parties shall cooperate with each other and with competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials. The subjects covered in such training shall include the following:

(a) Identification and tracing of firearms, ammunition and other related materials;

(b) Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, the methods of shipment used and the means of concealment used; and

(c) Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition and other related materials.

Article XVII
Confidentiality

Subject to the obligations imposed by its constitution or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives, from another State Party, ~~including proprietary information pertaining to commercial transactions~~, if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

Article XVIII
Technical assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, including technical assistance in those matters identified in article 18 of the Convention.

2. States Parties shall cooperate with each other and with competent international organizations, as appropriate, to ensure that there is adequate training of personnel in their territories to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials. The subjects covered in such training shall include the following:

(a) Identification and tracing of firearms, ammunition, **explosives** and other related materials;

(b) Gathering of intelligence, especially concerning the identification of persons engaged in the illicit manufacturing and trafficking in firearms, ammunition, **explosives** and other related materials, the methods of shipment used and means of concealment used; and

(c) Improvement of the efficiency of personnel responsible for searching for and detecting, at conventional and non-conventional points of entry and exit, illicitly trafficked firearms, ammunition, **explosives** and other related materials.

Article XVII
Confidentiality

Subject to the obligations imposed by its constitution or any international agreements, each State Party shall guarantee the confidentiality of any information that it receives from another State Party, if requested to do so by the State Party providing the information. If for legal reasons such confidentiality cannot be maintained, the State Party that provided the information shall be notified prior to its disclosure.

Article XVIII
Technical assistance

States Parties shall cooperate with each other and with relevant international organizations, as appropriate, so that States Parties may receive, upon request, the technical assistance necessary to enhance their ability to prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition, **explosives** and other related materials, including technical assistance in those matters identified in article 18 of the Convention.

Article XX
Mutual legal assistance

[Discussion of this article should be deferred at present. The umbrella Convention will probably contain an article concerning this general subject matter. When negotiations of those provisions have advanced further, it will be possible to determine whether provision, unique to firearm trafficking, must be inserted into the Protocol or whether the more general provisions of the umbrella Convention will suffice.]

Article XXI
Extradition

[Discussion of this article should be deferred at present. The umbrella Convention will probably contain an article concerning this general subject matter. When negotiations of those provisions have advanced further, it will be possible to determine whether provision, unique to firearm trafficking, must be inserted into the Protocol or whether the more general provisions of the umbrella Convention will suffice.]

Article XXII
Reservations

States Parties may, at the time of adoption, signature or ratification, make reservations to this Protocol, provided that said reservations are not incompatible with the object and purposes of the Protocol or the Convention and that they concern one or more specific provisions thereof.

Article XXIII
Denunciation

1. This Protocol shall remain in force indefinitely, but any State Party may denounce it. The instrument of denunciation shall be deposited with the Secretariat of the United Nations Organization. After six months from the date of deposit of the instrument of denunciation, the Protocol shall no longer be in force for the denouncing State, but shall remain in force for the other States Parties.

2. The denunciation shall not affect any requests for information or assistance made during the time the Protocol is in force for the denouncing State.

Article XIX
Final clauses

1. This Protocol shall be open for signature by all States from .... at the Headquarters of the United Nations in New York.

2. This Protocol shall be subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article XXIV
Deposit

The original instrument of this Protocol shall be deposited with the Secretariat of the United Nations for registration and publication. The Secretariat of the United Nations shall notify the Member States of the Organization of the signatures, of the deposits of instruments of ratification and denunciation and of any reservations.

Annex

The term "explosives" does not include compressed gases; flammable liquids; explosive-activated devices, such as air bags and fire extinguishers; propellant-activated devices, such as nail-gun cartridges; consumer fireworks suitable for use by the public and designed primarily to produce visible or audible effects by combustion, that contain pyrotechnic compositions and that do not project or disperse dangerous fragments such as metal, glass or brittle plastic; toy plastic or paper caps for toy pistols; toy propellant devices consisting of small paper or composition tubes or containers containing a small charge or slow-burning propellant powder designed so that they will neither burst nor produce external flame except through the nozzle on functioning; and smoke candles, smoke pots, smoke grenades, smoke signals, signal flares, hand signal devices and Very signal cartridges designed to produce visible effects for signal purposes containing smoke components and no bursting charges.

United Kingdom of Great Britain and Northern Ireland

[Original: English]

Comments on the Canadian draft Firearm Protocol

A. General

1. It should be said at the outset that the draft text provides a solid and useful basis on which future discussions can proceed. Given the tight time-frames anticipated for the United Nations Convention, the relatively advanced state of the draft should allow jurisdictions to focus more readily on the more contentious issues we expect to encounter in concluding the Protocol.

2. As may already be known, the draft text borrows extensively from the provisions contained in the Organization of American States (OAS) Convention against Illicit Firearms Manufacturing/Trafficking. At least one of the OAS provisions (see below), if adopted entirely for the purposes of the United Nations Protocol, would prove difficult from UK perspectives, and our ability to deal effectively with the Canadian delegation should permit us to work through such potential difficulties more readily.

B. Specific comments

Preamble

3. Subparagraph (b) of the Preamble refers to an "increase" in the illicit manufacturing of and trafficking in firearms, yet the nature of evidence suggesting an "increase" may be problematic despite being apparent. As such, it may be vulnerable to objections from other jurisdictions. Alternatively, perhaps "occurrence" or "indications of an increase" might be more appropriate language.

Article II (Definitions)

"Ammunition"

4. Currently, not all component parts of ammunition are controlled under UK firearm legislation. Blank ammunition is also exempt. It is possible therefore for someone to manufacture and trade in cartridge cases, for example, without the need for authorization. The reasoning behind this is that certain components are not dangerous in themselves and there is no danger to public safety in allowing persons to manufacture such items. To take account of this situation, the UK suggests amending the definition of ammunition in the following way:

> "Ammunition": the complete round or its components, including cartridge cases, primers, propellant powder, bullets or projectiles that are used in any firearm provided those components are themselves subject to authorization in the respective State Party."

"Firearms"

5. UK representatives believe there will be many divergent practices in relation to the controls placed on antique firearms and air weapons and that this needs to be addressed in the definition. Given that such weapons are unlikely to feature heavily in the commission of crimes, the UK would favour amending the definition of firearms in the following way:

"Firearms": any lethal barrelled weapon of any description from which any shot, bullet or other missile can be discharged, excluding air weapons and antique firearms that are not subject to authorization in the respective State Party".

"Illicit manufacturing"

6. In subparagraph (d) (ii) of the definition, the UK would favour the following wording to take account of the fact that a government-issued licence may not be the form of authority issued in each State:

(ii) Without an appropriate authority from the State Party where the manufacture or assembly takes place;"

"Other related materials"

7. The question of what constitutes a component part or a spare part has been a contentious issue for a long time in the UK. It is generally accepted that certain component parts, such as small screws or springs that are commonly used other than in firearms, do not need to be controlled. Arguably, however, they could be essential to their operation, in particular if they held everything together. Equally, a firing pin is essential but could be easily replaced by a common item such as a nail.

8. This definition will need to be carefully considered, but at present we would favour omission of the words "essential to its operation". There may also be difficulties with reference to "an accessory that can be attached to a firearm and that enhances its lethality", given that bayonets, presumably, would be captured by this language. As an alternative, it may be necessary to adopt a set of references that are much more specific to the of attachments known to exist. For example, a reference to silencers, if we are looking to include them, could be "... any accessory to any such weapon designed or adapted to diminish the noise or flash caused by firing the weapon".

Article IV (Scope)

9. UK officials question whether the inclusion of the words "commercially traded" to describe the classes of firearms covered by the Protocol may be too restrictive.

10. If the intention is simply to contrast these types of firearms with what follows in this article (i.e. "international transactions or transfers for purposes of national security"), then perhaps the following wording could be substituted:

"This Protocol applies to all classes of firearm, including those which are commercially traded, and all classes of ammunition and related materials, but not to State-to-State transactions or transfers for the purpose of national security".

Article V (Criminalization)

11. The UK firmly supports the criminalization of the offences identified in the Protocol, and would like to see consideration given to the creation of a new offence to cover the "brokering" of illicit firearm deals abroad by citizens operating from within their own countries. The wording of such an offence could mirror that currently used in section 20 of the UK's Misuse of Drugs Act 1971:

"A person commits an offence if in the United Kingdom he assists in or induces the commission in any place outside the United Kingdom of an offence punishable under the provisions of a corresponding law in force in that place".

Article VI (Jurisdiction)

12. Similarly, this provision could be extended to include a provision allowing State Parties to maintain jurisdiction over their nationals who commit no offence in their home country, but engage in illicit arms trafficking abroad. The wording of such an offence could mirror that now used in section 7 of the UK's Sex Offenders Act, 1997:

"Any act done by a person in a country or territory outside the United Kingdom which

"(a) constituted an offence under the law in force in that country or territory; and

"(b) would constitute a [firearms] offence to which this section applies if it had been done in the United Kingdom,

shall constitute that [firearms] offence under the law of the United Kingdom.

"No proceedings shall by virtue of this section be brought against any person unless he was at the commencement of this section, or has subsequently become, a British citizen or resident in the United Kingdom."

Article VIII (Record-keeping)

13. Reference in paragraph 2 to the "last transaction effected under a particular certificate" requires further explanation and clarification. The need to keep "the information necessary to trace and identify illicitly manufactured ... firearms" has already been recorded in paragraph 1 but, presumably, the provisions contained in the first sentence of paragraph 2 serve some additional purpose. The UK endorses any effort to create a computerized database and more ready access to firearm information and intelligence by State Parties.

Article IX (Marking)

14. As described above, UK officials fully agree in principle with the inclusion of a provision for the marking of firearms, but note that the proposed wording will require further refinement. While we would wish to consider in more detail how and whether specific text requires amendment, the following preliminary observation are offered:

(a) The provision to require appropriate marking "at the time of manufacture" may, subject to further discussion, need additional reference to "year of manufacture". Clarification of "place of manufacture" might also be contemplated in terms of the degree of specificity intended (i.e. whether the marking to be placed on a weapon would refer to the country or—alternatively—to the locale where it is manufactured);

(b) The wording of the draft Protocol for "markings on imported firearms" is taken directly from the OAS Convention. In this respect, it differs from the text that was previously decided for the G-8 Action Plan, which read "... following importation for the purpose of commercial sale within the importing country, or permanent private importation, so that the resource of the firearms can be traced". Previous discussions of this issue have highlighted some of the differences in importation practices that exist in

some jurisdictions (e.g. the United States). These practices in the UK make it imperative that the wording used in the G-8 Action Plan be retained for the Protocol.

Article X (Reactivation)

15. The wording used in the Protocol makes little attempt to address the problem posed by varying deactivation standards. Jurisdictions may wish, alternatively, to identify and agree to a certain standard in the text of the Protocol instead of simply committing to "considering taking the necessary measures to prevent the reactivating of deactivated weapons".

Article XIII (Controls at export points)

16. There would appear to be some contradiction in requiring State Parties to adopt "such measures as may be necessary" to detect and prevent trafficking between jurisdictions, and the more prescriptive phrase, "by strengthening controls at points through which exports pass".

Article XIX (Final clauses)

17. It should be noted that the relationship between the Protocol and the United Nations Convention on Transnational Organized Crime will require further elaboration at an appropriate time (i.e. when more details about the Convention become known). For example, do jurisdictions need to be party to the Convention before they can be party to the Protocol? Also, there is no provision for entering into false denunciation or accession reservations.

C. Conclusion

18. In addition to these remarks, we continue to explore the possibilities of the UK hosting one of the workshops proposed by Canadian officials as part of the draft work plan prepared for the protocol. We are actively pursuing this possibility, but do not expect to be in a position to provide a more definitive answer on this matter for some time.

United States of America

[Original: English]

Comments on the Canadian draft firearm protocol

Article II (Definitions)

Paragraph 5, "Illicit trafficking"

1. The draft criminalizes the failure to mark firearms at the time of manufacture by including such an offence in the definition of "illicit manufacturing".

However, by not including in the definition either the failure to mark imported firearms or the obliteration of serial numbers, the draft fails to criminalize those offences. We recommend that importing firearms without providing the appropriate markings and obliterating serial numbers be added to the definition of illicit "trafficking":

"5. 'Illicit trafficking':

"(a) The import, export, acquisition, sale, delivery, movement or transfer of firearms, ammunition and other related materials from or across the territory of one State Party to that of another State Party, if any one of the States Parties concerned does not authorize it; or

"(b) The import of firearms without marking at the time of importation; or

"(c) The obliteration, removal or alteration of the serial number on a firearm."

Paragraph 6, "Other related materials"

2. The draft definition has two parts: (a) parts and components that are essential to the firearm (essentially an Inter-American Drug Abuse Control Commission (CICAD) concept); and (b) parts and components that "enhance the lethality" of the firearm. The draft definition has two problems. Firstly, the term "enhance the lethality" is highly ambiguous. If the intent of that phrase is to include such items as scopes and silencers, it is not at all clear that it achieves that goal. In fact, a reasonable argument could be made that a firearm's lethality is strictly defined by its calibre. Under such an interpretation, virtually nothing would fall under that part of the definition. Secondly, limiting the definition to only those parts which are "essential" to the functioning of the firearm is overly broad. Arguably, virtually all parts—including stocks, triggers and barrels—are non-essential to the firearm's ability to expel a projectile. Consequently, we recommend the following definition:

"6. 'Other related materials': any component, part or replacement part of a firearm."

Article III (Purpose)

3. This paragraph includes only one half of the purpose articulated in article II of the Organization of American States (OAS) Convention. It includes only the promotion and facilitation of cooperation with respect to illicit firearm trafficking. It omits the purpose of preventing, combating and eradicating illicit firearm trafficking. There does not appear to be any reason for such an omission. Consequently, we recommend that the following be added as a second paragraph of the Protocol:

"To prevent, combat and eradicate the illicit manufacturing of and trafficking in firearms, ammunition and other related materials."

Article IV (Scope)

4. The term "commercially traded" is unnecessarily ambiguous. This Protocol should apply to all firearm transactions except for certain enumerated exceptions, such as State-to-State transactions.

5. Consequently, we propose the following language for article IV:

"This Convention applies to all classes of firearms, ammunition and other related materials, except that it does not apply to State-to-State transactions or to transactions for purposes of national security."

Article V (Criminalization)

6. This article is narrower than its OAS counterpart by requiring only the criminalization of "intentional" offences related to illicit manufacturing and trafficking. This is also narrower than our own law, which criminalizes knowing and wilful violations. The term "intentionally" should be removed from this article.

7. Additionally, this Protocol provides the opportunity to require the criminalization of violations of United Nations arms embargoes. Such an obligation could be included in this article or placed in its own article as follows:

"State Parties that have not yet already done so shall adopt the necessary legislative or other measures to sanction criminally, civilly or administratively under their domestic law the violation of arms embargoes mandated by the Security Council."

Article VIII (Record-keeping)

Paragraph 2

8. This paragraph refers to records being kept for not less than 10 years after the last transaction effected under a particular certificate. Firstly, we recommend that this obligation be reduced to five years, as it is under CICAD. Secondly, we recommend that the term "particular certificate" be replaced with the term "licence or authorization".

Paragraph 3

9. This paragraph is not in the OAS Convention. Further, it may be overburdensome for some States Parties. Therefore, we recommend that this paragraph be removed.

Article IX (Marking of firearms)

Paragraph 1 (b)

10. Though not currently required by the OAS Convention, we consider it might be helpful to add a provision requiring the marking of an individual serial number if the firearm does not bear one at the time of import. Consequently, this paragraph would read as follows:

"(b) Require appropriate markings on imported firearms permitting the identification of the importer's name and address, and an individual serial number if the firearm does not bear one at the time of import; and"

Article XI (General requirements for export, import and transit licence or authorization systems)

11. This article is based on the OAS Convention. However, this Protocol represents an opportunity to go beyond OAS in this area in two important respects. Firstly, it provides the opportunity to institute a system in which the export, import and in-transit licences or authorizations are consistent, contain parallel information and are issued in the proper order, that is, import then in-transit (where relevant) then export. Secondly, this Protocol provides the opportunity to require written approval from the exporting country prior to re-export by the importing country. The following is the draft of an alternative article XI that would accomplish both of these goals:

"Article XI

"1. States Parties shall establish or maintain an effective system of export, import and international transit licences or authorizations for transfers of firearms, ammunition and other related materials.

"2. States Parties, before issuing an export licence or authorization for the shipment of firearms, ammunition and other related materials for export, shall verify that the importing and in-transit countries have issued licences or authorizations. Each export, import and in-transit licence or authorization shall contain the same information, which at a minimum shall identify the country and date of issuance, the date of expiration, the country of export, the country of import, the final recipient and the description and quantity of the articles.

"3. States Parties, before issuing an in-transit licence or authorization and permitting the transit of firearms, ammunition and other related materials, shall verify that the receiving State Party has issued the corresponding import licence or authorization.

"4. The importing State Party shall inform the exporting State Party, upon request, of the receipt of dispatched shipments of firearms, ammunition and other related materials.

"5. Written approval from the exporting country must be obtained before a State Party may authorize the re-export, retransfer, transshipment or other disposition of firearms to any end user, end use or destination other than as stated on the export licence or authorization."

* * *

"*Article* ... [proposed new article]

"*Registration and licensing of brokers*

"Any person, wherever located, who engages in the business of brokering activities with respect to the manufacture, export, import or transfer of any firearms is required to register with and receive approval from his/her country of nationality.

"*Article* ... [proposed new article]

"*Establishment of a focal point*

"1. In order to attain the objectives of this Protocol, the States Parties shall establish a focal point within [____] responsible for:

"(a) Promoting the exchange of information contemplated under this Protocol;

"(b) Facilitating the exchange of information on domestic legislation and administrative procedures of the States Parties, including relevant international instruments or agreements on matters related to this Protocol;

"(c) Encouraging cooperation between national liaison authorities to detect suspected illicit exports and imports of firearms, ammunition and other related materials;

"(d) Promoting training and exchange of knowledge and experience among States Parties and technical assistance between States Parties and relevant international organizations, as well as research on matters related to this Protocol;

"(e) Requesting from non-party States, when appropriate, information on the illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

"(f) Promoting measures to facilitate the application of this Protocol;

"(g) Establishing a mechanism to monitor compliance with Security Council embargoes on arms transfers;

"(h) Establishing a database for consultation among States Parties on illicit manufacturing of and trafficking in firearms, ammunition and other related materials;

"(i) Disseminating information to the general public on matters related to this Protocol;

"(j) Coordinating international efforts to combat the illicit manufacturing of and trafficking in firearms, ammunition and other related materials, in particular among relevant international organizations."